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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 August 1991, at 3 p.m.

Chairman: Mr. JOINET
later: Mr. HELLER
Mr. TURK

CONTENTS

The administration of justice and the human rights of detainees (continued)

(a) Question of human rights of persons subjected to any form of detention and imprisonment

(b) Question of human rights and states of emergency

(c) Individualization of prosecution and penalties, and repercussions of violations of human rights on families

(d) The right to a fair trial

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The meeting was called to order at 3.25 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL

(E/CN.4/Sub.2/1991/19 and Add.1, 20-22, 24-26, 28, 29, 50, 53 and 56; E/CN.4/Sub.2/1991/NGO/18, 19 and 28; E/CN.4/1991/18; E/CN.4/Sub.2/1990/10, 30 and 32; A/CONF/144/28 and A/CONF/144/INF.2)

1. Mr. EIDE announced that, according to last-minute information, the Soviet crisis was in the process of being settled; consequently, there was no longer any point in continuing the debate on the subject under agenda item 10 (b). If the information proved to be inaccurate, the Sub-Commission would, of course, resume its consideration of the matter but, for the time being, it ought to continue with its other work.

2. The CHAIRMAN noted that some of the reports drawn up under agenda item 10 were ready and could be introduced by their authors. That was the case with the reports of Mrs. Bautista (E/CN.4/Sub.2/1991/24), Mr. Treat and Mr. Chernichenko (E/CN.4/Sub.2/1991/29), and Mr. Despouy (E/CN.4/Sub.2/1991/28). The report prepared by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/56) was for the moment available only in English and the report of the Working Group on Detention had not yet been published in all languages.

3. Mrs. BAUTISTA, introducing her report on the application of international standards concerning the human rights of detained juveniles (E/CN.4/Sub.2/1991/24) pointed out that children and juveniles were the first helpless victims of violations of human rights committed throughout the world and suffered, directly or indirectly, from the effects of the violence currently occurring in various places. More and more young people aged from 16 to 21 years were becoming what were called "juvenile deliquents"; their civil and political rights were very often violated under the system of juvenile justice, especially during detention, when they were denied the right to counsel and to visits by doctors or family members. However, it was young people who would, in future, have to settle all the very complex problems arising in the field of human rights and to attenuate their effects on peoples' lives, particularly at the political, economic, social and cultural levels. The future of mankind would depend on the way in which their rights had been respected. The Sub-Commission therefore had a duty to concern itself with their fate and to take measures to protect them, to prevent further violations of their rights and to see to it that they were taught certain

fundamental principles such as the dignity inherent in the human person and the principle that human rights were inalienable and that the full development of every human was dependent upon their exercise.

4. In preparing her report, she had based herself on information collected from the replies to a questionnaire sent out to Governments and to non-governmental organizations. Although the replies had been fewer than she would have liked, they were sufficient to show that the Sub-Commission really needed to take up the question of the protection of juvenile delinquents. As indicated in paragraph 13 of the report, juvenile delinquency was closely interrelated with certain socio-economic problems which led young people to commit offences and to come into conflict with the law. In paragraphs 17 to 53, the report gave an overview of the international human rights standards applicable to minors deprived of their liberty and then examined the compatibility of national legislations on juvenile justice with them. National legislative provisions concerning detained juveniles sometimes differed greatly. For example, the minimum age for criminal liability varied from one country to another - a matter which therefore needed to be studied more thoroughly. Another very important consideration was that instead of confining minors in prisons where they were often in contact with convicted adults, it would be better to place them in special centres to facilitate their social rehabilitation. As far as possible, detention pending trial should be replaced by other measures such as residence with a family or in a re-education establishment or hostel.

5. The information collected showed that in some countries the death penalty could be imposed on minors; the Sub-Commission should therefore consider that matter with the greatest urgency. It should appeal to the Governments of all the countries concerned to abandon the practice. In addition, minors charged with serious offences punishable by death should be given the benefit of a fair trial, have the right to counsel and be examined by psychologists to ascertain whether they really had been responsible for their acts at the time when they had committed them.

6. In conclusion she thanked the secretariat for its help, as well as all the non-governmental organizations, particularly Defence for Children International, which had assisted her.

7. Mr. Heller took the Chair.

8. Mr. TREAT, introducing the second report on the right to a fair trial (E/CN.4/Sub.2/1991/29), which he had prepared in cooperation with Mr. Chernichenko, recalled that the first report on the subject (E/CN.4/Sub.2/1990/34) had examined the principal treaties and other international human rights instruments dealing with that right, as well as some aspects of the right which might be made non-derogable. The comments made by members of the Sub-Commission during its debate on that report at its forty-second session, as well as the changes which had resulted from them, were resumed in the second report, which enumerated the new international standards for a fair trial that had been adopted since then. It also contained a summary of the replies received to the questionnaire distributed in April 1991 and suggestions and recommendations on how to strengthen the

right to a fair trial. A large part of the report, however, was devoted to a review of the interpretations which the Human Rights Committee had given to the principle of the right to a fair trial set forth in the International Covenant on Civil and Political Rights.

9. The Committee had, for example, interpreted the right of every accused person to be assisted by counsel, set forth in article 14 of the Covenant, as meaning, inter alia, that an accused person was free to choose his own counsel and that the court could not prevent that counsel from representing him. When counsel was appointed ex officio by the court, he must effectively defend the accused. Furthermore, the accused must be able to communicate with his lawyer in private in order to prepare his defence. Article 14 clearly required that persons charged with offences punishable by death must absolutely have the assistance of counsel, whether of their own choice or appointed by the court. The comments made by the Human Rights Committee on the question of habeas corpus also merited consideration. In particular, the Special Rapporteurs shared the Committee's opinion that the remedy of habeas corpus set forth in article 9, paragraph 4, of the Covenant should be a non-derogable right. The consideration of that right formed an integral part of a detailed study on the right to a fair trial, which would be thoroughly examined in the third report. The latter would focus, more particularly, on the interpretation of the standards for a fair trial established by the European Commission and European Court of Human Rights and by the Inter-American Commission and Inter-American Court of Human Rights.

10. The fourth report, to be submitted at the Sub-Commission's forty-fifth session, would include an initial analysis of national practices regarding the implementation of the right to a fair trial. That phase of the study would be complex and time-consuming. It would be based on the replies to a questionnaire to be sent out to Governments and interested specialized agencies and non-governmental organizations. The initial questionnaire, which had been sent out to Member States by the Centre for Human Rights in April 1991, had been revised in the light of the replies and comments made by recipients and would be revised again on the basis of the comments made at the present session of the Sub-Commission. Since the Commission on Human Rights had requested that the questionnaire be sent out also to interested specialized agencies and non-governmental organizations, it would be modified to reflect the different nature of those bodies. The Special Rapporteurs would therefore like to know the opinions and suggestions of members on the subject. When drawing up the report, they had recognized the need to coordinate their work with that of other Special Rapporteurs, particularly Mr. Joinet and Mr. Despouy, who were responsible for preparing reports on the independence of the judiciary and lawyers and on human rights and states of emergency, respectively.

11. In conclusion, he thanked, on his own behalf and on that of Mr. Chernichenko, all those who had assisted them in drawing up the report, particularly the Centre for Human Rights, which had been extremely cooperative, and the members of the Sub-Commission, who had provided them with continued support and advice.

12. Mr. CHERNICHENKO began by saying what a pleasure it had been to work with Mr. Treat. When preparing the second report, they had found that their task was even more difficult than they had thought and that it was quite probable that the analysis of national legislation and practice would be very complex, made even more arduous by certain technical problems arising from the fact that sometimes Governments did not reply to the questions put to them or did so late. He therefore hoped that the Centre for Human Rights would continue to provide them with appropriate assistance and that, if necessary, it would remind Governments that they should supply the information requested.

13. Since the work in hand should ultimately lead to the preparation of draft standards, he hoped that members of the Sub-Commission would reflect on their form and content. Would it be a code or a declaration, and should it comprise very general provisions or reflect first the overall situation, then the situation in criminal law, and then the situation in civil law, and finally the administrative situation? Initially, it might be advisable to give priority to general considerations. In any case, it would be helpful if members of the Sub-Commission and non-governmental organizations could communicate their views on the subject.

14. He thanked all the members of the Sub-Commission and NGOs for their suggestions and comments concerning the first report, as well as the Centre for Human Rights for the assistance which it had kindly given to the two Special Rapporteurs.

15. Mr. DESPOUY introduced his report on the question of human rights and states of emergency (E/CN.4/Sub.2/1991/28). For several years he had submitted a list of States that had proclaimed, extended or terminated a state of emergency and he had examined the legality of those measures. In 1991 he had tried to give an overall picture, and in chapter I he had recapitulated, one by one, the States on which he had reported since 1985. He had found that, according to the most reliable information, given or confirmed by the States themselves, 61 States had proclaimed, extended or terminated states of emergency. At the end of that chapter a map, the inclusion of which inaugurated a new method, showed that since 1985 only four South American States had not been subjected to emergency measures. He intended to draw up such maps for the other regions of the world and appealed to all those who could help him to complete or correct his list to do so.

16. As far as the internal and international legality of states of emergency was concerned, in the current report he had not submitted the synoptic table in which he usually consolidated the information available to him on emergency measures - the reasons put forward, derogations, the territory covered, the time involved, and so on - but he was preparing a few of them, including one on the Soviet Union and another on the Israeli-occupied Arab territories.

17. With regard to the effect on human rights of measures adopted during states of emergency, it should be emphasized that a state of emergency was not necessarily unlawful but could be compatible with a democratic system and be intended to defend it. Only the abuse or incorrect application of such measures had harmful repercussions on human rights, with whatever that might entail in terms of excesses, violations, arbitrariness and, in a word, attacks

on personal freedom. Indeed, one of the rights generally affected by a state of emergency was the right to personal freedom. From that standpoint he was paying particular attention to detention. In that connection he welcomed the establishment of the working group on arbitrary detention, which would be able to study the matter in all its complexity and diversity. He also quoted a few figures illustrating the situations which Chile, Viet Nam and South Africa had experienced and gave an idea of the extent of the problem.

18. In chapter IV, he gave a summary of the methods that he had applied. In paragraphs 43 to 47 he set forth, as systematically as possible, the way in which, with the support of the Sub-Commission and the Commission, he had carried out his mandate, in particular his procedure with regard to the examination of the legality of states of emergency and their effects on human rights. He also wished to draw special attention to his procedure for the systematic verification of the correctness of the information that had been sent to him, particularly with Governments, presuming that the Sub-Commission would have no objection. On the previous day, for example, he had sent a note to the Government of the USSR requesting details of the measures adopted and indicating the great importance of a prompt reply; in his view, that initiative fell fully within his mandate.

19. In chapter V his task was to prepare draft standard provisions applicable during states of emergency. He himself had preferred to use the term "criteria", and that was the kind of indication that would be used in the report. He intended to intensify such research, which met a need, as was shown by the requests for advice which had been sent to him, by the reforms taking place in the East, or by the legislation being prepared in Namibia. Since he had been requested by the Commission on Human Rights to prepare at least an outline of the draft standard provisions, the opinions of his colleagues would be appreciated.

20. Mr. ALFONSO MARTINEZ introduced his working paper on the privatization of prisons (E/CN.4/Sub.2/1991/56). After indicating, in the introduction, how interest which the issue had aroused in the Working Group on Detention had then been reflected in the Sub-Commission, and how his own consultations with his colleagues in the Sub-Commission and with several non-governmental organizations had shown the usefulness of making such a study and had led the Sub-Commission to entrust it to him, he took up the fundamental issues dealt with.

21. First of all he had analysed the current debate on the advantages and disadvantages of privatization. There was certainly no question of reverting to past practices in which the purpose of the private management of prisons was profit-making and the intensive exploitation of prison labour, to such an extent that the State itself had had to assume responsibility for the administration of prisons, but the past must not be completely disregarded in the present research.

22. As from paragraph 12, he examined the various stages at which private capital was currently active in the prison system: at the stage of financing the construction of prisons, when private companies were called in; at the stage of prison administration, which included the supervision of prisoners

and any disciplining of them; at the stage of any use of prison labour for industrial operations inside or outside prisons; or at the much more complex stage of participation in the overall financing, design, construction and operation of the prison as a whole.

23. He then turned to a wide range of basic issues of a conceptual, philosophical or simply practical nature which were especially acute in the case of prisons administered by private capital, since they involved the potential contradiction between the provision of a public service in the interests of the prisoner and of society on the one hand and profit, the purpose of private capital, on the other. The exercise of authority was also a question of the greatest importance. There was certainly a big difference between authority exercised, even indirectly, on behalf of the State and authority exercised on behalf of a private enterprise. The problem was that of responsibility for the use of force, which was part and parcel of the coercion implicit in any form of detention.

24. In his conclusions and recommendations he proposed that certain action be taken in direct response to the requests made by the Sub-Commission in its resolution 1989/110. First of all, he would like to have the matter discussed in plenary, if not at the present session then at least at the next. Meanwhile, the Sub-Commission could decide to request Governments to submit their views on the subject, their replies constituting the basis for a brief document to be prepared by the secretariat. The Sub-Commission would then be able to conduct its work on more solid foundations. In paragraph 32 of his paper he proposed three options for the Sub-Commission; he himself preferred the third - namely, that the Sub-Commission should recommend to its parent bodies the appointment of one of its members as Special Rapporteur with a mandate to undertake a special study on the question of the privatization of prisons. In view of the complexity of the work, it would be better if the person appointed was someone not already responsible for making another study.

25. Mr. GOLDBERG (International Federation of Human Rights) denounced impunity in general. By nullifying the obligation set forth in the Universal Declaration on Human Rights and in the International Covenant on Civil and Political Rights to permit those whose rights had been infringed to seek a remedy before a competent authority, impunity undermined the whole system for the protection of human rights. The situation was particularly serious in Guatemala, where an ineffective judiciary and an all-powerful police constituted a sad illustration of impunity. A case in point was that of two members of the civilian self-defence patrol who had allegedly murdered three members of the Consejo de las Comunidades Etnicas Runujel JUNAM and who had never been detained, since the police had totally disregarded the warrants issued for their arrest. Unfortunately, Guatemala was by no means the only country where intimidation, physical and moral pressures and arbitrariness had replaced the law.

26. His organization therefore requested the Sub-Commission to undertake a study of all the reasons why impunity existed and of ways of eliminating it, so that a legal and practical framework could be drawn up, on the basis of Mr. Joinet's recommendations, for the effective implementation of the international norms by those States that wished to do so.

27. Impunity was also a scourge afflicting the ethnic Albanian inhabitants of Kosovo, especially since the Republic of Serbia had dissolved the Kosovo Parliament and muzzled the information media. Kosovo was no longer autonomous and was subject to a state of emergency under which the civil and political rights of its ethnic Albanian population were being brutally violated. The violations took the following forms: extrajudicial killings, including the killing of seven Albanians since the beginning of the Sub-Commission's present session; unlawful entry and searches without a warrant, as in the case of Besin Latifi and Skender Monolli, who had been killed in their home during the night; arbitrary arrests and detentions, sometimes on the sole ground that the victim possessed an audio-cassette of Albanian songs; ill-treatment, as in the particularly exemplary case of Professor Alush Gashi, Dean of the Faculty of Medicine and Surgeon-General, who had been brutally maltreated by armed policemen and taken to a detention centre for having refused to enrol 250 Serbs who had not passed an entrance examination for the Pristina medical faculty; and finally, the abuse of legal process, illustrated by the fact that the system of appeal was ineffective in practically all cases.

28. Mrs. XIMENES (Civitas, an organization affiliated to the International Federation of Human Rights) said that she was a Timorese. From 1985 to 1990 she had attended an Indonesian University before fleeing from East Timor in June 1990 with the help of the International Red Cross. She wished to report on the repression from which the population of East Timor was suffering and on the conditions of detention which she had experienced. At the time of the Indonesian invasion in December 1975, she had fled from her village with her family, all the members of which, herself included, had been arrested by the military and then imprisoned along with 400 other persons. She had witnessed rape, torture and beatings. Among the rapists, she named Major Ali Musa, Captain Jamrot and an officer called Nasup.

29. She mentioned cases with which she was personally familiar: for example, in May 1990, at Wetice, soldiers had broken into a meeting of young Catholics; after expelling the boys, they had raped the girls, aged 13 and 14 years. Some of the girls had had to be taken to hospital. The driver who had taken them had been arrested after having informed the International Red Cross and nothing more had been heard of him. In July 1985, she had enrolled at Udayana University, Bali. The Timorese students were compulsorily enrolled in the official youth organization, IMPETTU, and were under constant surveillance. Several of them had been murdered: Acacio Fonseca, in 1986; José Moniz, in 1987; Miguel Noronha, in 1988; and José Carvalho in 1989. Others had been beaten, tortured and threatened with death. On 23 February 1991 a letter had been sent by Lieutenant Soentoro to the Head of the Intelligence Department of the Armed Forces in Jakarta on the subject of the activities of the Timorese student network RENETIL in Indonesia. The letter gave the names of several members accused of subversive activities and specified the measures to be taken to monitor students' activities and any contacts they might have with foreigners such as journalists and tourists.

30. The International Federation of Human Rights requested the Indonesian authorities to allow non-governmental human rights organizations to enter Indonesia and East Timor. It was to be hoped that the Special Rapporteur on Torture, whom Indonesia had invited, would have free access to everywhere he

intended to go and to everyone he intended to meet. The International Federation of Human Rights hoped that a delegation of the Sub-Commission could also be invited to East Timor.

31. Mr. Türk took the Chair.

32. Mr. HARPER (Commission of the Churches on International Affairs of the World Council of Churches) informed the Sub-Commission that in June 1991 an ecumenical delegation had visited the Republic of Armenia under the auspices of the World Council of Churches and the Conference of European Churches. It had travelled extensively throughout the country, meeting with church and government officials and with individuals who had had to leave the region of Nagorno-Karabakh and Armenian villages in the Armenian-Azerbaijani border areas. For 70 years the Armenian population of that region had been subjected to oppression and to a systematic violation of its most elementary rights. Since 1988, Armenian appeals for self-determination had led only to massacres and deportations by the Soviet Azerbaijani authorities. A state of emergency had been proclaimed at the beginning of 1990, and since then a very large number of civilians had been obliged to leave their villages. The persons with whom the members of the delegation had spoken had reported the suffering and fear of the people: torture, hostage-taking, rape, looting, the burning of houses and so on. The Armenian authorities had been able to confirm the chronology of the events which had taken place from 16 April to 21 May, in which over 88 persons had died, 500 had been taken as hostages, and 1,013 had been deported.

33. Since then the situation had hardly changed. In the light of those violations of human rights, the World Council of Churches urged the Sub-Commission to do whatever it could to ascertain the location of detention centres in Azerbaijan and Nagorno-Karabakh, to investigate the conditions in Azerbaijani prisons, and to try to put an end to torture. The World Council of Churches also called upon the Government of the Soviet Union to take urgent steps to restore the civilian administration in the Nagorno-Karabakh region, to assume full responsibility under national and international law for the protection of the civilian populations in time of armed conflict, and to establish guarantees for the protection and defence of the rights of all its citizens.

34. Mrs. DILLER (International Human Rights Law Group) welcomed the recent trends in international affairs, marked by the holding of free elections in many parts of the world. Unfortunately, however, some Governments were continuing to grant total impunity to persons guilty of violating non-derogable human rights, including the right to live without being exposed to the danger of torture, involuntary disappearance or extrajudicial, arbitrary or summary execution. Both military and civilian courts were contributing to that state of affairs, the first by pardoning military offenders, the second through a lack of political will. The impossibility of obtaining redress for decisions taken to the detriment of human rights was destroying public confidence in the judicial system and therefore weakening it.

35. Although the problem was certainly difficult, the law in that regard was perfectly clear. To be sure, the granting of an amnesty was a prerogative of the State, but when the effects of an amnesty deprived victims of the possibility of redress as provided for in international instruments, that prerogative no longer existed. The human rights that were non-derogable and in respect of which an amnesty could therefore not be granted were rules of jus cogens, as, for example, the right to freedom and the right to freedom from being tortured. It was therefore unthinkable that the victims of violations of those rights should be deprived of an international remedy. Likewise, the State of which the victims were nationals could not escape its international obligations. A State could not invoke its domestic law as an excuse for failing to comply with its international obligations. That principle was set forth in article 27 of the Vienna Convention on the Law of Treaties and had also been confirmed in 1930 by an advisory opinion of the Permanent Court of International Justice in the Greco-Bulgarian Communities case. Neither could a State invoke a change of Government in order to elude its responsibility. The Inter-American Court of Human Rights had itself applied those principles in the Velásquez-Rodríguez case.

36. She noted with satisfaction the important work done by the United Nations on the question of impunity, and in particular the study on amnesty made by Mr. Joinet in 1985, as well as the work of the Commission's Working Group on Enforced or Involuntary Disappearances and the work of the United Nations Special Rapporteur on summary or arbitrary executions. In that respect she noted principle No. 19 of the principles relating to the effective prevention of extralegal, arbitrary and summary executions contained in the annex to the Economic and Social Council resolution 1989/65, by virtue of which no blanket immunity could exempt a person implicated in that kind of execution from prosecution.

37. The International Human Rights Law Group requested the Sub-Commission to prepare a working paper, without financial implications, on the issue of impunity, which would consider the international legal framework applicable to the problem of impunity and the de jure and de facto practices of impunity in various countries, including the role played by military courts. The working paper could also review the Sub-Commission's work on issues in which impunity was an important factor.

38. Mr. HAMERMAN (International Progress Organization) said that the human rights situation in the United States of America was worrying, particularly as far as the administration of justice and the independence of the judiciary were concerned. It was paradoxical that, despite the abundance of de jure guarantees, in actual fact the death penalty was being increasingly imposed at the very time when, in the former totalitarian regimes of Eastern Europe, one of the first measures taken in the endeavour to democratize the judiciary had been to abolish the death penalty. The former Attorney-General Ramsey Clark had pointed out that there were at present more than 2,000 prisoners awaiting execution in the United States and that a very large number of them were poor or members of minority groups. The decisions of the Supreme Court since William Rehnquist had become its President were progressively putting an end to the guarantees of a fair trial. The judiciary was increasingly engaged in "witch hunts" against certain political dissidents. There was, for example, a

complex of cases involving Lyndon H. Larouche, which provided a clear illustration of the misuses of judicial power for political ends. Several judgements handed down during the year were in violation of international conventions and principles and restricted habeas corpus, impaired fair jury standards, undermined protection against arbitrary searches and seizures, legalized forced confessions and made it easier to impose the death penalty. Even more serious was the fact that a Supreme Court Justice, Thurgood Marshall, had warned that Justice Rehnquist had a secret agenda to dismantle the whole set of rights and guarantees in the name of judicial efficiency. In such a climate, the administration of justice was becoming anarchic. The principles of the independence of the judiciary and the right to a fair trial were flouted at all major political trials, such as the Iran Contra case and the Larouche case, by the invocation of "national security".

39. He drew attention to the extensive publicity given to certain trials and to the way in which the media blackened the accused, especially when they were politicians; General Noriega and Marion Barry, mayor of Washington, D.C. were cases in point. He urged the Sub-Commission to inquire into the deterioration of judicial standards that was occurring in the United States at a time when that country was always the first to react when a State resorted to police measures. The Sub-Commission should do everything it could to redress the real judicial apartheid that prevailed in the United States. The trend was even more disturbing because the United States had long been a champion and model of equality before the law.

40. Mr. GUISSE, commenting on the problem of impunity, stated that he, together with Mr. Joinet, had updated the work done by Mr. Joinet since 1985 and had produced an account of the situation; the updated text would be distributed as a basic document for further consideration of the issue, without financial implications.

41. Mr. BALIAN (Human Rights Advocates) said that the Special Rapporteur for human rights and states of emergency, Mr. Despouy, had done well to draw the Sub-Commission's attention to the problem of asylum-seekers held in administrative detention. UNHCR had also deplored the large increase in cases of detention in 1990, sometimes unduly prolonged (see document E/CN.4/Sub.2/1991/20).

42. It was true that some countries of first asylum, applying discriminatory provisions in immigration matters, were detaining asylum-seekers solely on the basis of their country of origin and were preventing them from having recourse to the courts, thereby violating article 9 of the International Covenant on Civil and Political Rights. The persons concerned were sometimes isolated and without contact with a lawyer. There were cases of their being held for long periods in harsh conditions. The overcrowding at detention centres for asylum-seekers, which were placed under the control of the police and the prison authorities, was at variance with the standards laid down by WHO. There were also instances of asylum-seekers during their detention being subjected to violence with lasting traumatic effects, especially on children. Even if it was true that asylum-seekers posed serious problems for the host countries, particularly if they arrived in very large numbers, their detention was incompatible with international refugee standards and might deter asylum-seekers from fleeing from situations of gross human rights violations.

43. The Sub-Commission should consider both the erosion of the right to asylum in general and the arbitrary detention of asylum-seekers that was occurring at a time when in many places political persecution remained endemic. The Working Group on Detention should also make specific reference to the issue of the detention of asylum-seekers and their protection in conformity with international standards. His organization had available to members of the Sub-Commission a document on the protection of Vietnamese asylum-seekers in Hong Kong.

44. The state of emergency recently declared in the USSR, which might lead to the elimination of the nationalities problem by the use of force, had induced Human Rights Advocates to circulate a petition, signed by 34 NGOs, urging the Sub-Commission to consider the situation, as well as copies of the Soviet legislation governing states of emergency. In the general relief over the outcome of the crisis the nationality conflicts occurring, not only in the Baltic States, but throughout the Soviet Union should not be lost sight of, since they might lead to the declaration of further states of emergency. The international community therefore had a duty to find a peaceful solution to the problem.

45. Human Rights Advocates and the NGOs which had signed the aforementioned petition were grateful to the Sub-Commission for having considered the state of emergency in the USSR. It was to be hoped that those responsible for the recent human rights crisis in the USSR would remain in good health and would be given a fair trial.

46. Mr. O'DONNELL (Defence for Children International) expressed the hope that the good news about the situation in the USSR given by Mr. Eide was correct. The previous session of the Sub-Commission had coincided with another crisis, the invasion of Kuwait, which had been tragic not only for the Kuwaiti people but also for the Iraqi people and for other peoples and countries in the region. Although the Sub-Commission was the only expert body in the United Nations system with, fortunately, a sufficiently flexible mandate to react rapidly to emergency situations, that was no reason for it to neglect other problems, particularly permanent violations of the human rights of children and other vulnerable and often marginalized groups.

47. The Sub-Commission had been dealing with the question of detained juveniles since 1985. In 1989 the Working Group on Detention had requested Mrs. Bautista to prepare a report without financial implications. For that purpose a questionnaire had been prepared, to which a large number of States and NGOs had replied. It was to be hoped that the report submitted at the present session (E/CN.4/Sub.2/1991/24) would be given the consideration it deserved, since, despite some progress, nothing substantial had been accomplished in promoting the human rights of detained juveniles. As the Special Rapporteur had pointed out, it was not so much a matter of supplementing existing international standards, which were adequate, as of enforcing them. In defiance of international standards, it still happened that juveniles were brought before ordinary criminal courts as if they were adults, either because specialized tribunals had not yet been created or because their competence was restricted. It also still happened that

juveniles could not be released before trial without paying bail and that they were sentenced to penalties of 20, 30 or even 50 years of imprisonment, or even to death.

48. In order to promote compliance with existing standards, it would be useful to concentrate on the few issues referred to in the progress report to be submitted to the Sub-Commission in 1992. In that connection, his organization had prepared a document containing more detailed proposals (E/CN.4/Sub.2/1991/50). It would also be advisable to clarify the replies received from Governments, which were obscure, incomplete or at variance with credible information received from other sources, and to use the information supplied by credible non-governmental sources, after, of course, the State concerned had been given an opportunity to comment on it. Care must be taken to ensure that the progress report was consistent not only with international standards in scope but also with the concepts and language used in different parts of the world, which varied greatly.

49. To enable the Special Rapporteur to submit a report which made a positive contribution to the implementation of international standards, the secretariat must provide more technical assistance. Greater consultation with NGOs and intergovernmental bodies having relevant experience was also necessary, and it would be useful to organize an international meeting of experts under the auspices of the Centre for Human Rights, UNICEF and the United Nations Crime Prevention and Criminal Justice Branch. To be able to respond to the appeal which the General Assembly, in its resolution 45/113, had made for a concerted and lasting effort to secure the implementation of the international rules for the administration of juvenile justice, the Special Rapporteur should be provided with the necessary support, in the interests of an incalculable number of young people.

50. Mrs. PERREGAUX (Centre Europe-Tiers Monde) noted that the Sub-Commission had been considering the question of the rights of detainees since 1974 and that, as an NGO, her organization had a duty to transmit to it the information which it possessed on the subject. However, since she was unable to give a proper account of the situation in many countries, she would limit herself to the conditions of detention of hundreds of Saharans of which the Commission on Human Rights, the Sub-Commission and the Human Rights Committee - which had not been able to hear Morocco as scheduled in July 1991 - had already been informed.

51. If the recent information to the effect that Saharans had been released was confirmed, everybody would be delighted; however, no list of names had been published by the Moroccan authorities, which, until quite recently, had even denied that they were holding Saharans in detention. That information proved at least that the statements made by NGOs had been trustworthy despite the official denials. But how could one admit to detaining persons who, with a few rare exceptions such as the young Saharans of the Meknès group, had never enjoyed the right to a fair trial, had therefore never been tried, but were convicted by implication? In such circumstances, it was difficult to differentiate between missing persons and unconvicted prisoners; in the case of the Saharans, reference should be made to prisoners and/or missing persons.

52. Information published by Amnesty International in particular showed that in 1991 many Saharans were being detained in conditions as frightful as those at the Tazmamart Prison. Although that was happening quite close to Geneva, what could be done when it was to all intents and purposes impossible to visit Morocco and the Western Sahara in order to meet those concerned, as the NGOs would like to do?

53. Moreover, the Moroccan Government had always refused to repatriate the 200-odd Moroccan soldiers released by the Polisario Front in May 1989, who were still living near the Saharan refugee camps. Her organization had recently seen them and knew that in some cases their death had already been announced to the family several years previously. Nevertheless, on 29 April 1991 the United Nations Security Council had adopted a plan providing for the release of all prisoners held by Morocco and the Polisario Front after the proclamation of a cease-fire which was due to come into force on 6 September, as both parties had agreed. It was therefore to be hoped that, despite the recent disturbing news from Morocco, the United Nations would ensure that the plan was respected unconditionally, as it had recently been able to do elsewhere, that the detainees would be released and that a free referendum would be organized in the area, as the Sub-Commission and the Commission on Human Rights had requested. Her organization had drawn up a list of the 800 missing or detained Saharans who should be released before the referendum.

54. Mr. TOTSUKA (International Educational Development Association) welcomed the fact that, in its resolution 1991/34, the Commission on Human Rights had invited the Sub-Commission to study the implementation of United Nations norms and standards regarding the administration of justice, to identify the problems, and to recommend viable solutions and take the necessary action. It was very important for the Sub-Commission to invite Governments to submit detailed reports indicating how each of the relevant United Nations norms was incorporated in their domestic law, specifying, where appropriate, why that had not been possible. The Sub-Commission should also encourage Governments to give full publicity to the norms.

55. The situation of certain detainees in Japan highlighted the need for such representations. Under a system introduced in 1908 as a temporary measure to make good the shortage of detention centres for unconvicted prisoners, the daiyo kangoku, unconvicted prisoners were returned to police custody after a certain period and kept in cells generally for a period of 20 days but often for much longer, after having appeared before a judge. That was a violation of article 9, paragraph 3, of the International Covenant on Civil and Political Rights and of Principle No. 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The prisoners' possibility of contacting a lawyer was very limited, in violation of article 14, paragraph 3 (b) and (d), of the Covenant, of Principles Nos. 11, 17 and 18 of the aforementioned Body of Principles, and of Principles Nos. 1, 2, 3, 6, 7 and 8 of the Basic Principles on the Role of Lawyers. It was estimated that 100,000 persons were victims of the practice every year.

56. There were also many judicial errors in Japan. At the moment, 44 prisoners were awaiting execution. Most of them had been convicted on the strength of enforced confessions during police detention. Mr. Hakamada, to mention only one of them, had also been tortured during his detention and forced to make a confession. Although he had subsequently retracted his confession, he had been sentenced to death and the Supreme Court had confirmed the sentence in 1980. Mr. Hakamada was at present trying to obtain a review of his trial, but the prosecutor was refusing to divulge evidence in his possession.

57. In that connection it should be borne in mind that in 1989 the Human Rights Committee had considered, in several cases initiated by communications, that the sentence should be commuted or the prisoner released on certain conditions if he had not been able to have access to counsel. In the case of all those awaiting execution in Japan, there had been serious procedural violations, including violations of the right to counsel. While welcoming the fact that, for the first time in the recent history of Japan, no execution had been carried out in 1990, his organization considered that the persons mentioned should be released or that their sentence should be commuted. It also hoped that the Government would abolish the death penalty.

58. In a report published in January 1991, Amnesty International drew attention to that situation and made essentially the same recommendations to the Japanese Government. The latter, however, was persisting in trying to make the daiyo kangoku system permanent, and two bills to that effect had been submitted to the National Diet for the third time. The bills ignored the right to counsel problem. Shockingly, the Japanese Government had adopted none of the main provisions set forth in Sub-Commission resolution 1991/34, including the relevant provisions of the International Covenant on Civil and Political Rights, to which Japan was a party, the aforementioned Body of Principles and the Basic Principles on the Role of Lawyers. The Japanese Government should therefore reaffirm, as it had done in 1984 in the case of the mentally sick, that it would follow international trends in the matter of human rights and fundamental freedoms. His association would continue to address the Japanese judicial system directly, as it had recently and successfully done in the case of a violation of the same kind, and it urged the Sub-Commission to follow its example.

59. Finally, his organization was extremely concerned about the preventive detention of Tamils in India.

The meeting rose at 6 p.m.